

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5334 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKAR

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
  2. To be referred to the Reporter or not? : YES
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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PRAVINCHANDRA F SHAH

Versus

STATE OF GUJARAT  
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Appearance:

MR GIRISH PATEL for Petitioner  
MR. M.A.BUKHARI AGP for Respondent No. 1  
MR PV HATHI for Respondent No. 2  
MR HJ NANAVATI for Respondent No. 3  
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CORAM : MR.JUSTICE C.K.THAKKAR

Date of decision: 28/03/2000

ORAL JUDGEMENT

This petition is filed by the petitioner for  
quashing and setting aside an order of dismissal from  
service Annexure "O" to the petition, dt. January 21,

1989, passed against him by Agricultural Produce Market Committee, Matar -respondent no.2 herein ( "Committee" for short), as also an order passed by the Director of Agricultural Produce Market (Rural Finance), Gandhinagar -respondent no.1 herein on June 23, 1989 Annexure 'Q' to the petition being ultra vires, null, void, and unconstitutional and for a direction to the respondents to continue the petitioner in service, as if the order had never been passed against him by granting all consequential benefits.

2. The case of the petitioner was that on 1st October, 1964, he was appointed as Secretary of the Agricultural Produce Market Committee, Matar. He had served the Market Committee with utmost satisfaction for several years. Suddenly, on 22nd September, 1984, the petitioner was suspended by making false allegations against him that he had misappropriated funds of market committee. A complaint was filed against him which was registered as Criminal Case No.244 of 1986 for the offences punishable under Sections 408-411 read with Section 114 of the Indian Penal Code in the Court of Judicial Magistrate, First Class, Matar. A chargesheet was submitted. The petitioner pleaded guilty and by a judgment and order dt. 17th October, 1989, he was convicted by the Judicial Magistrate for the above offences. No substantive sentence, however, was imposed on him and he was granted benefit of probation under Section 360 of the Code of Civil Procedure, 1973 on certain terms and conditions mentioned in the said order.

3. According to the petitioner, as no substantive sentence was imposed on him and he was granted benefit of probation, no action could have been taken against him so far as his services were concerned, and he was required to be reinstated. Accordingly, in November, 1986, the petitioner made an application to the Market Committee to reinstate him in service as all the proceedings against him were over. The matter was taken on Agenda and the case of the petitioner was considered in the Meeting of the Committee. It was alleged by the petitioner that instead of reinstating the petitioner in service, a resolution was passed by the Market Committee resolving that as the petitioner was prosecuted in a competent Criminal Court for temporary misappropriation of certain amounts of the Market Committee and as he pleaded guilty and convicted by the court, it would be proper to terminate services of the petitioner with effect from 16th February, 1987.

4. The petitioner was surprised and shocked by the

above resolution and action taken by the market committee and approached this court by filing a petition being Special Civil Application No. 518 of 1987. The Court entertained the petition and directed the respondents to maintain status quo. Since the petitioner was not allowed to perform his functions and discharge his duties, he filed a contempt petition being Misc. Civil Application No. 55 of 1987, which came up for hearing before a Division Bench and by an order dt. 3rd April, 1987, the said Misc. Civil Application was disposed of on a statement by learned counsel for the Market Committee that an appropriate decision will be taken against the petitioner after holding Departmental Inquiry and no order will be implemented without taking prior permission of the court. On the basis of the above statement and the order passed by the Court, the petitioner withdrew the application. Thereafter on 3rd March, 1987, a notice was issued by the Market Committee asking the petitioner to show cause as to why his services should not be terminated in view of the fact that a criminal case was filed against him in which he pleaded guilty and he was convicted. The petitioner was called upon to submit his reply within ten days from receipt of the notice, failing which an appropriate action will be taken against him presuming that he had nothing to say in the matter. It appears that the petitioner approached the Director of Agriculture against the above show cause notice and ad-interim relief was granted against further proceedings. On 5th May, 1987, however, a communication was addressed by the Market Committee to the petitioner stating therein that there was no necessity for holding any inquiry against the petitioner in view of conviction of the petitioner recorded by the competent Criminal Court. He was, therefore, called upon to state only with regard to quantum of punishment within three days from the receipt of the notice. The petitioner objected to the said notice vide his reply dt. 9th May, 1987, inter alia contending that the proposed action was not in consonance with the statement made before the Hon'ble High Court and the Market Committee was required to hold Departmental Inquiry as per the statement. It was also stated that in spite of that, if any action will be taken, the petitioner will be constrained to take appropriate action in accordance with law. On 25th June, 1987, a Meeting of the Committee was called and a resolution was passed by majority of 13:1 to terminate the services of the petitioner. The Chairman was authorised to take appropriate action and to inform the petitioner about the resolution passed by the Market Committee. Accordingly, the impugned action was taken. It also appears that as

per direction issued by a Division Bench of this Court in Misc. Civil Application No. 55 of 1987, an application was filed by the Committee being Misc. Civil Application No. 1169 of 1988, seeking permission of the court to serve termination order on the petitioner. The permission was granted by the Division Bench by an order dt. 19th January, 1989 (Annexure : N to the petition), wherein the Division Bench observed thus,-

" So far as the merits of this petition are concerned, having heard Mr. Joshipura, learned Counsel for the petitioner and Mr. Trivedi, learned Counsel for the respondent -employee, in our view, all that is required to be done in the present proceedings is to grant a formal permission to the petitioner -Market Committee to serve the termination order on the respondent employee. We are not called upon to decide as to whether the order is right or wrong or whether the requisite departmental inquiry was held by the Market Committee before passing the order or not and whether requisite procedure was complied with or not. These questions are obviously kept open. Because Mr. Joshipura had made a statement earlier before the Division Bench taking up contempt matters that the termination order will not be implemented without taking prior permission of this Court, this application is moved. We do not find any reason why this formal permission cannot be granted to the petitioner -Market Committee so that the order can be served on the respondent -employee. We accordingly grant such formal permission, making it very clear that we express no opinion on the merits of the said order and it will be open to the respondent to challenge the same, if aggrieved, before the competent forum, if so advised. At the request of Mr. Trivedi, learned Counsel for the respondent -employee, we also direct that once the termination order is served on the respondent -employee, it shall not be implemented for a period of then days from the date on which the termination order is served on the respondent. Mr. Joshipura, learned Counsel for the petitioner states that the order will be sent by registered post to the respondent for service. Mr. Trivedi, learned Counsel for the respondent assures the Court that once the order is so dispatched, the respondent will accept the service by registered post. Mr. Joshipura has also agreed to give one additional copy of the

termination order directly to Mr. Trivedi, learned Counsel for the respondent and he has agreed to accept the same." (Emphasis supplied).

5. On January 21, 1989, an order was passed which is at Annexure "O" to the petition terminating the services of the petitioner. An appeal filed before the Director of Agriculture was dismissed on 23rd June, 1989 vide Annexure "Q". The appellate authority considered rival contentions of the parties, and also a decision of the Hon'ble Supreme Court in *DIVISIONAL PERSONNEL OFFICER SOUTHERN RAILWAY AND ANOTHER VS. T.R.CHALLAPPAN*, AIR 1975 SC 2216 and held that an action could have been taken by the Market Committee on the basis of conviction of the petitioner. He further observed in the operative part of the order that taking into account the observation of the Hon'ble Supreme Court in *T.R.Challapan*, the Market Committee will reconsider the quantum of punishment imposed on the petitioner within fifteen days from the receipt of the order. Even thereafter it is of the view that action of dismissal was called for, it was open to the Market Committee to pass such order. From the affidavits and further affidavits, it has come on record that the Market Committee reconsidered the decision and reiterated its earlier resolution dismissing the petitioner from service. The said order is challenged in this petition.

6. Rule was issued and parties appeared. Today the matter is called out for final hearing.

7. I have heard Mr. Shalin Mehta for Mr. Girish Patel, Senior Advocate for the petitioner, Mr. M.A.Bukhari, learned Assistant Government Pleader for respondent no.1, Mr. P.V.Hathi, for respondent no. 2, and Mr. H.J.Nanavati for respondent no.3.

8. Mr. Mehta raised several contentions. He submitted that in the facts and circumstances of the case, no order of dismissal could have been passed against the petitioner. According to him, when a criminal case was filed against him, a promise was held out to him that if he would plead guilty, liberal view will be taken and his services will not be terminated. Relying on the said promise, the petitioner acted to his detriment and pleaded guilty. Thereafter it was not open to the respondents to terminate his services or to take punitive action against the petitioner. Such action is arbitrary, unreasonable and is liable to be quashed and set aside. He also contended that as soon as the proceedings before the criminal court were over, he made

an application to the Market Committee in November, 1986 requesting the Committee to reinstate him in service. Instead of re-instating him, taking undue advantage of guilt and confession of the petitioner in criminal court, a resolution was passed in February, 1987 terminating his services. That was clearly illegal and abuse of power by Committee which constrained the petitioner to take appropriate proceedings in accordance with law. Mr. Mehta submitted that the petitioner approached the Director, who granted interim relief. Even this court also was convinced when he filed Special Civil Application No. 518 of 1987 and ordered status quo. In contempt petition, a statement was made by the Market Committee that no action will be taken against the petitioner, without holding departmental inquiry. According to Mr. Mehta, even if it is assumed that the Market Committee had power to take action, it was obligatory on the part of the Committee to issue show cause notice and observe principles of natural justice.

9. Mr. Maheta submitted that no departmental inquiry was instituted, no opportunity of hearing was afforded and no finding was recorded against the petitioner and the action was clearly unlawful and illegal. He also challenged the legality and validity of the order passed by the Director. According to him, the Director proceeded on the basis of guilt admitted by the petitioner before a competent court, ignoring the most important material and vital fact of giving of assurance by the Market Committee. The order of Director, therefore, requires to be quashed and set aside. Finally, he submitted that even if this court holds that the action could have been taken against the petitioner by the Market Committee, the quantum of punishment is grossly disproportionate and excessively high. He submitted that the petitioner had completed 20 years of services. His service record was blotless and unblemished. Only in 1984, some incident took place. Hence, taking into account exceptional and special circumstances, this court may pass an appropriate order reducing the punishment or by directing the appellate authority or original authority to reconsider the matter as to the quantum of punishment to be imposed on the petitioner.

10. Learned counsel for the respondents, on the other hand, supported the order passed by the Market Committee and confirmed by the Appellate Authority. They submitted that there is nothing on record to show that there was any assurance given to the petitioner before he pleaded guilty in a criminal court. A case registered against the petitioner was a Police Case for offences punishable

under the Indian Penal Code, and it was before a competent criminal court. It was, therefore, open to the petitioner either to plead or not to plead guilty. He, however, thought it fit to plead guilty and accordingly, an order of conviction was recorded against him. The Counsel submitted that two things, namely; (i) conviction of an accused for offences punishable under the Indian Penal Code, and (ii) imposition of substantive sentence are quite different. True it is that in view of the fact that misappropriation was temporary in nature for a small amount and the petitioner pleaded guilty, the Learned Magistrate did not think it fit to award substantive sentence. All the same, he recorded conviction and only thereafter probation was granted to the petitioner under Section 360 of the Code of Criminal Procedure, 1973. The conviction was not obliterated. Since the petitioner was convicted, appropriate action could be taken against him and it was taken. The petitioner cannot make any grievance against the action terminating his services.

11. It was also contended that as conviction was recorded by a competent criminal court, there was no necessity on the part of the Market Committee to hold departmental inquiry and it rightly proceeded on the basis of conviction recorded by a competent criminal court and called upon the petitioner to show cause as to why punishment should not be imposed upon him. It was submitted that no promise was held out, and no assurance was given. It could not have been given by any officer when a criminal case was instituted against the petitioner on police complaint. The said allegation was made by the petitioner to save his skin resulting from conviction recorded by a competent court.

12. It was also submitted that a Division Bench of this court had passed an order directing the Market Committee not to take any action without prior permission of the court. The Committee, in these circumstances, filed Misc. Civil Application No. 1169 of 1988 and accordingly permission was granted. It is, not doubt, true that while granting the permission, the Division Bench observed that granting of permission would not deprive the petitioner from challenging legality of the order passed against him. Hence, in the present petition, this court will consider whether action taken by the Market Committee is or is not in consonance with law. If it is in accordance with law, the action must be upheld. If it is contrary to law, it will be declared null and void.

13. Finally, it was submitted that since the

petitioner was holding a post of Secretary of the Market Committee, and was convicted for misappropriation of amount, may be for a temporary period, an action dismissing him from service could not be said to be arbitrary, disproportionate or excessive and when the appellate authority also did not interfere with the action, this court may not interfere with the quantum of punishment and dismiss the petition.

14. Having heard the learned counsel for the parties.

I am of the view that the petitioner has not made a case for interference by this court. Main point for consideration before me is whether the petitioner can be said to be convicted for offences under Sections 408-411 read with 114 of the Indian Penal Code or not. It cannot be disputed that the conviction has been recorded by a competent criminal court. Relying on decisions of the Hon'ble Supreme Court in T.R.CHALLAPPAN, UNION OF INDIA AND OTHERS VS. BAKSHI RAM, AIR 1990 SC 987, HARICHAND VS. DIRECTOR OF SCHOOL EDUCATION, (1998)2 SCC 383; and of this court in P.J.RADADIA VS. STATE BANK OF SAURASHTRA, 1993(1) GLR 896, it was submitted that conviction remains conviction, even if the convict is not ordered to undergo substantive punishment but enlarged on probation. Considering the provisions of Section 12 of the Probation of Offenders Act, 1958, the Apex Court held that release of offender on probation under the Probation of Offenders Act does not obliterate, the stigma of conviction. In fact, an accused can be granted benefit of probation only after he is found to be guilty, and convicted of the offence. An order of release on probation is merely in substitution of sentence to be imposed by the court. The factum of guilt on the criminal charge is not swept away merely by making an order releasing the offender on probation. The conviction remains untouched and the stigma remains. Only thing is that the convict is not sent to undergo jail punishment.

15. In Bakshi Ram, a convict was enlarged under Section 12 of the Probation of Offenders Act. Considering the scheme of the Act, their Lordships observed that the said provisions did not preclude the department from taking action for misconduct leading to the offence or to his conviction in accordance with law. The section never intended to exonerate such convicts from the departmental punishments. The expression "shall not suffer disqualification, if any, touching to a conviction of an offence under such law" was interpreted to mean, disqualification on account of such conviction and not independent of it. It was, therefore, open to



the employer to take appropriate proceedings in accordance with law on the basis of factum that a person was convicted by a competent criminal court.

The Court, in paras 10 and 13 observed,

10. In criminal trial the conviction is one thing and sentence is another. The departmental punishment for misconduct is yet a third one. The Court while invoking the provisions of S.3 or 4 of the Act does not deal with conviction; it only deals with the sentence which the offender has to undergo. Instead of sentencing the offender, the Court releases him on probation of good conduct. The conviction, however, remains untouched and the stigma of conviction is not obliterated. In the departmental proceedings the delinquent could be dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge. See Art.311(2)(b) of the Constitution and Tulsiram Patel case, 1985 Suppl (2) SCR 131 at 282: (AIR 1985 sc 1416 AT Pp.1485-86):

13 Section 12 is thus clear and it only directs that the offender "shall not suffer disqualification, if any, attaching to a conviction of an offence under such law". Such law in the context is other law providing for disqualification on account of conviction. For instance, if a law provides for disqualification of a person for being appointed in any office or for seeking election to any authority or body in view of his conviction, that disqualification by virtue of S.12 stands removed. That in effect is the scope and effect of S.12 of the Act. But that is not the same thing to state that the person who has been dismissed from service in view of his conviction is entitled to reinstatement upon getting the benefit of probation of good conduct. Apparently, such a view has no support by the terms of S.12 and the order of the High Court cannot, therefore, be

sustained. (Emphasis supplied).

16. In Harichand , the petitioner was convicted for the offences punishable under Section 408 of the Indian Penal Code. When he was dismissed from service, he invoked provisions of Section 12 of the Act. Negating the contention, Court stated-

"In our view, Section 12 of the Probation

of Offenders Act would apply only in respect of a disqualification that goes with a conviction under the law which provides for the offence and its punishment. That is the plain meaning of the words "disqualification, if any, attaching to a conviction of an offence under such law" therein. Where the law that provides for an offence and its punishment also stipulates a disqualification, a person convicted of the offence but released on probation does not, by reason of Section 12, suffer the disqualification. It cannot be held that, by reason of Section 12, a conviction for an offence should not be taken into account for the purposes of dismissal of the person convicted from government service". (Emphasis supplied)

A similar question arose before me in P.J.Radadia. There, a criminal case was filed against the petitioner who was a cashier in a Bank for misappropriation of amount. He pleaded guilty and the court released him on probation for a period of three years. He was thereafter dismissed from service. He contended that since he was released on probation, there was no "conviction" and he should not have been dismissed from service. Relying on Challappan , and Bakshi Ram, I negated the contention observing as under :-

" Having heard the learned Counsel for the

parties, I am of the opinion that no case has been made out to interfere with the order passed by the disciplinary authority and confirmed by the appellate authority and confirmed by the appellate authority. It is an admitted fact that a criminal case was filed against the petitioner wherein, he pleaded guilty and was convicted. The contention of the petitioner that when probation is granted, it cannot be said that a person is convicted is devoid of any merit. The point is concluded by decisions of the Hon'ble Supreme Court in the case of Divisional Personnel

Officer v. T.R.Challappan, reported in AIR 1975 SC 2116 and reiterated in the case of Union of India v. Baksi Ram, reported in AIR 1990 SC 987. In both the cases, the Court held that the release of the offender on probation does not obliterate the stigma of conviction. In criminal trial, conviction is one thing and sentence is another. The Court while invoking the provisions of the Probation of Offenders Act, 1973, does not interfere with conviction. It only deals with sentence the offender has to undergo. Instead of sentencing the offender, the Court releases him on probation of good conduct. The conviction, however, remains untouched and undisturbed. In fact, finding of guilt and conviction by a competent Court is a sine qua non for the order release of offender on probation. Here justice is tempered with mercy intended to reform the offender with a view to seeing that he does not become hardened criminal. I am, therefore, unable to accept the argument of Mr. Hathi that the order releasing the petitioner on probation obliterated conviction and hence the petitioner could claim reinstatement". (Emphasis supplied).

17. From the above decisions, the legal position appears to be clear and fairly well-settled and it is that conviction and imposition of substantive sentence are two different things and even if substantive sentence is not imposed on the criminal, conviction stands. Grant of benefit of probation either under the Probation of Offenders Act, 1958 or under Section 360 of the Code of Criminal Procedure, 1973, does not obliterate conviction. In fact, holding a person guilty is a sine qua non for granting probation under any law for the time being in force. Such person, therefore, cannot contend that there is no conviction against him. Taking into account the circumstances and considering the provisions of the Probation of Offenders Act, or Section 360 of the Code of Criminal Procedure, a court may exercise discretion and instead of sending a person to jail, an opportunity may be extended in his favour with humanist approach. Nonetheless there is conviction and if such conviction results in certain consequences, they must ensue unless the law prohibits them. Section 12 of the Probation of Offenders Act does not state that no action can be taken on the basis of conviction by a competent court. In my opinion, therefore, it was open to the Market Committee to take appropriate action on the basis of conviction recorded by a competent criminal court against the petitioner.

18. No doubt, Mr. Mehta contended that in all the three cases before the Apex Court, the accused did not plead guilty but on the basis of the evidence adduced before the court, he was found guilty. Drawing the distinction between "pleading guilty" and "found guilty," the Counsel contended that the petitioner would not have pleaded guilty, had he being made aware that on conviction being recorded, some consequence will ensue. In my opinion, however, law does not make any difference between admission of guilt and finding as to guilt. In P.J. Radadia, the accused pleaded guilty and yet the action of the Bank in dismissing him from service was held to be legal and valid. In my judgment, the question is not whether the petitioner pleaded guilty or he was found guilty of an offence. The question is of conviction and once a person is convicted, he can be dealt with on the basis of such conviction unless there is an embargo by some law. It was, therefore, open to the authorities to take appropriate action against the petitioner and the petitioner cannot make grievance against it.

19. It was also submitted that the authorities were estopped under the doctrine of promissory estoppel from taking any action against the petitioner in view of the assurance was given to him that if he would plead guilty, he would be dealt with leniently. In this connection, Mr. Mehta invited my attention to Para 8 of the petition in which it was stated that when the case was registered against him, the petitioner was not in a position to decide what to do. At that time, the then Chairman of the Market Committee -Jayantilal Prabhudas Patel and Police Officers who filed complaint, persuaded him that on his pleading guilty, they (Chairman and Police Officers) would see that benefit of probation would be extended to him and on being released on probation, he would be taken back in service. Mr. Maheta stated that an affidavit is filed by the Chairman of the Market Committee. The above fact, however, is not controverted.

19. Now it may be stated that the averment has been made by the petitioner against the then Chairman -Jayantilal Prabhudas Patel. He has not been joined as a party respondent eo-nomine. No doubt, the Agricultural Produce Market Committee was joined as respondent no.2 and notice was ordered to be served through the Chairman, but the averment has been made against Mr. Jayantilal Patel who is not a party respondent here. Affidavits in reply have been filed by Chairman -Premabhai Keshubhai Solanki and by Mr. M.R.Bhatt -Secretary of the Market Committee. So far as Police Officers are concerned, no

names have been given nor they are joined as parties. It is also pertinent to note that it was nowhere stated by the petitioner immediately after the judgment and order passed by the Court of Judicial Magistrate, First Class, Matar on October 17, 1986 that he had pleaded guilty on assurance given to him that his case will be dealt with sympathetically and he will be reinstated in service. Even in reply to the show cause notice issued to the petitioner, such a stand was not taken by him. It was for the first time in this Court that the above contention has been raised by the petitioner, which cannot be allowed.

20. It was then contended that in contempt petition, a statement was made on behalf of the Market Committee that an appropriate decision will be taken only after holding departmental inquiry against the petitioner, but without holding inquiry, the services of the petitioner were terminated. The said action was thus contrary to law and inconsistent with the statement made before this Court. It, however, cannot be forgotten that in Misc. Civil Application No. 1169 of 1988 filed by the Market Committee, a Division Bench granted the prayer of the Market Committee to serve an order of termination of services of the petitioner upon him by keeping the contentions of the parties open and by observing that such permission would not be considered as the order being legal and valid and legality or otherwise of the order would be decided in accordance with law.

21. Thus, the question is whether such an action could have been taken by the Market Committee in accordance with law or not. As observed by me hereinabove, once the petitioner was convicted by a competent criminal court, the fact that benefit of probation was granted to him, did not make any difference and consequences from such conviction would ensue. Inasmuch as there is no bar under Section 12 of the Probation of Offenders Act, it was open to the Market Committee to take an action on the basis of such conviction and accordingly an order of dismissal from service passed by the Market Committee cannot be said to be contrary to law or otherwise unlawful.

22. The last point is of quantum of punishment. Ordinarily, in exercise of extraordinary powers under Article 226 of the Constitution, a High Court does not substitute its judgment for the judgment by the authorities and unless punishment awarded by the authority is held to be grossly disproportionate,

excessively high or arbitrary, this court will not interfere with the same. In the instant case, the petitioner was holding a post of confidence i.e. Secretary of the Market Committee who had to deal with among others, financial matters. He himself misappropriated the amount, albeit temporary, but when he admitted his guilt and was convicted by a competent criminal court, the action of terminating his services by the Market Committee cannot be termed as arbitrary, irrational or so unreasonable that no reasonable man would take such action. Moreover, when the appellate authority i.e. Director of Agriculture asked the Market Committee to reconsider the decision and the Market Committee reconsidered it and found the action to be proper and legal, I do not consider that the Market Committee has committed any error of law or of jurisdiction. The said argument also does not detain more.

23. For the foregoing reasons, the petition deserves to be dismissed and is accordingly dismissed. Rule is discharged. In the facts and circumstances of the case, there shall be no order as to costs.

Date: 28/3/2000. (C.K.THAKKER,J.)

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